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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,048	07/13/2001	Walter L. Peck	peck	2678

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EXAMINER

HAYES, BRET C

ART UNIT PAPER NUMBER

3644

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/682,048

Applicant(s)

PECK, WALTER L.

Examiner

Bret C Hayes

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☒ Claim(s) 1 and 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 1 and 6 are objected to because of the following informalities: claim 1, line 4, and claim 6, line 2, “the user” should be --a user--; and claim 1, line 5, and claim 6, line 3, “their foot” should be --a foot--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being unpatentable by US Patent No. 5,179,799 to Hillestad.

4. Hillestad discloses the claimed invention including (claim 1) a plant stand 10 comprising: at least one vertical support 11 communicating in a removable manner with the earth; an indentation 11a on the support 11; a bend – the crest above 11a – on the support 11; at least one ring 15 attached to the support 11; and a ridge 15a on the ring 15, the ridge 15a protruding from the ring 15 and in communication with the indentation 11a; (claim 9) a plant stand 10 comprising: at least one vertical support 11 communicating in a removable manner with the earth; an indentation 11a on the support 11; at least one ring 15 attached to the support 11; and a ridge 15a on the ring 15, the ridge 15a protruding from the ring 15 and in communication with the indentation 11a.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillestad.

7. Re – claim 2, Hillestad discloses the invention substantially as claimed including two additional rings **16, 17** of increasing sizes attached to the support **11**, except for at least three additional rings of increasing sizes from ring **15** attached to the support **11**. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a third ring, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St, Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

8. Re – claim 3, Hillestad discloses the invention substantially as claimed including two additional ridges **16a, 17a** for attaching the rings **16, 17** to the support **11**, except for at least three additional ridges for attaching the rings **16, 17** to the support **11**. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a third ridge, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St, Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

9. Re – claim 4, Hillestad discloses the invention substantially as claimed including two additional vertical supports **12, 13**, except for at least three additional vertical supports. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a third vertical support, since it has been held that mere duplication of the essential

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working parts of a device involves only routine skill in the art. *St, Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

10. Re – claim 5, Hillestad discloses the invention substantially as claimed including two additional indentations **11b**, **11c** to removably communicate with the ring **15**, and rings **16**, **17**, except for at least three additional indentations to removably communicate with the ring, and rings. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a third indentation, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St, Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

11. Re – claims 6 and 7, Hillestad discloses the invention substantially as claimed including two additional vertical supports **12**, **13** having such a bend as previously described, except for at least three additional vertical supports. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a third vertical support, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St, Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

12. Re – claim 8, Hillestad discloses such an arrangement.

13. Claims 10 and 11 are rejected under 35 U.S.C. § 103 as being unpatentable over Hillestad in view of US Patent No. 903,986 to Klahn et al.

14. Hillestad discloses the invention substantially as claimed as applied to claim 9 above. However, Hillestad does not disclose the ridge **15a – 15c** rotating within the indentation **11a – 11c** and between a locked and unlocked position.

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15. Klahn et al. teach a ridge 4 rotating within an indentation 3 between a locked and unlocked position, see FIGS. 1 and 2, for example, in the same field of endeavor for the purpose of collapsing a plant holder.

16. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hillestad to include the ridge rotating in the indentation between a locked and unlocked position as taught by Klahn et al. in order to collapse a plant holder.

Response to Arguments

17. Applicant's arguments with respect to claims 1 – 8 have been considered but are moot in view of the new ground(s) of rejection.

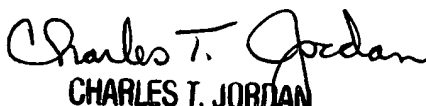
Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan, can be reached at (703) 306 – 4159. The fax number is (703) 872 – 9306.

bh

4/18/04


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